



**FIRST – TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : **BIR/41UG/HIN/2018/0026**

Property : **65 Poplar Close Stone Staffordshire
ST15 0JB**

Applicant : **John Betts**

Respondent : **Stafford Borough Council**

Type of Application : **An appeal against an Improvement
Notice under Schedule 1 to the
Housing Act 2004**

Tribunal Members : **V Ward BSc (Hons) FRICS
R Chumley - Roberts MCIEH CEnvH,
J.P.**

Date of Decision : **12 March 2019**

DECISION

BACKGROUND

1. On 22 October 2018, Stafford Borough Council, the Local Housing Authority and Respondent, served an Improvement Notice (“the Notice”) on the Applicant, John Betts, in respect of 65 Poplar Close, Stone, Staffordshire ST15 0JB (“the Property”).
2. The Improvement Notice stated that the Respondent considered that a category 1 hazard and two category 2 hazards existed at the Property. The “operative date” was given as 26 November 2018 and required the Applicant to undertake works detailed on the schedules accompanying the Notice. The Applicant was advised that an appeal must be made to a residential property tribunal within the period of 21 days beginning with the date on which the improvement notice was served. The nature of the category 1 hazard was noted as “Excess Cold” 2 (CAT 1) and the deficiencies giving rise to the hazard were listed. The category 2 hazards were given as “Electrical” 23 and “Collision hazards from low headroom” with again the deficiencies listed.
3. The remedial action works for the category 1 hazard – Excess Cold were listed as follows:
 - Carry out necessary repairs to the front door in a sound and suitable manner so as to ensure it is wind and weather proof.
 - Install a programmable whole house fixed heating system with adequate controls which is capable of heating the whole of the dwelling at a reasonable cost. The system should be capable of achieving a temperature of 21 c in habitable rooms and 18 c in non – habitable rooms with an external temperature of – 1 c.
 - Make good any damage caused by the damp and mould to the kitchen walls and cupboards in a sound and suitable manner which may include hacking off any damp, loose or defective plaster work and replastering to a fine finish.
 - Provide and install double glazed windows to the living room, kitchen and in the bedroom. Ensure that windows open and closes freely and latches securely. Also renew all (broken/missing/cracked/rotten) fixtures, fittings as necessary.
 - Provide and fix sound and suitable thermal insulation.

- Provide a substantial door of suitable construction, between the kitchen and the main living area. Such a door must be of at least pine panelled construction.
4. The period within which the remedial works were to be completed was given as 26 November 2018.
 5. For the category 2 hazard – “Electricals”, the remedial works were given as:
 - Re-secure the loose socket in the living room in a sound and suitable manner.
 - Replace the defective switch in the living room in a sound and suitable manner.
 6. The period within which the remedial works were to be completed was given as 26 November 2018.
 7. For the category 2 hazard – “Collisions from low headroom” the remedial works were given as:
 - Attend to unauthorised internal alterations carried out without permissions. Consult with building control to re-establish correct internal layout removing hazards relating to collision from uneven floor levels and exposed concrete stair case structure. Repair and make good all walls, floors as necessary.
 8. The period within which the remedial works were to be completed was given as 21 January 2019.
 9. The Applicant appealed to the Tribunal by way of an application form dated 21 November 2018, which was received by the Tribunal on 27 November 2018.
 10. Section 14 (1) of Part 3 Schedule 1 to the Housing Act 2004 states:

14 (1) Any appeal under paragraph 10 must be made within the period of 21 days beginning with the date on which the improvement notice was served in accordance with Part 1 of this Schedule.
 11. As the appeal appeared to be out of time the Tribunal was minded to strike out the application under Rule 9 (2) (a) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 which states as follows:

(2) The Tribunal must strike out the whole or a part of the proceedings or case if the Tribunal—

(a) does not have jurisdiction in relation to the proceedings or case or that part of them;

12. By way of Directions issued on 29 November 2018, the parties were invited to make representations in respect of the proposed strike out within 14 days.
13. The Applicant made submissions to the effect that the application should not be struck out as following receipt of the Improvement Notice on 24 October 2018, he had made representations to the Respondent on 30 October 2018 requesting that the Notice be suspended and further that the Notice was in breach of section 13 (3) of the Housing Act 2004. The Respondent replied on 8 November 2018, refusing the suspension of the Notice but not addressing the point relating to section 13 (3) of the Act.
14. The Respondent made the following submissions:
 - a) Following service of the Improvement Notice, the Respondent tried to contact the Applicant by telephone without success.
 - b) The Respondent confirmed the date of the Applicant's letter, 30 October 2018, and their letter in response on 8 November 2018, but point out that whilst some of the works require completion by 26 November 2018, structural works should be completed by 21 January 2019. In addition, the Applicant was advised that he could contact the authorised officer (of the Respondent) if additional time was required and an extension could be considered.
 - c) The Applicant in his letter of 30 October 2018 indicates awareness of the correct appeal procedure but did not follow it.
 - d) The Respondent would support the application being struck out.
15. Following consideration of the parties' preliminary submissions, the Tribunal issued further Directions instructing the parties to each prepare a Statement of Case setting out all matters of fact and law relied upon in relation to the Improvement Notice exhibiting all relevant documents and making particular comment in respect of:
 - a) *Whether the appeal should be allowed out of time.*
 - b) *Whether the Improvement Notice breached section 13 (3) of the Act.*

16. Neither party requested an oral hearing.

INSPECTION

17. The Tribunal carried out an inspection of the Property on 5 March 2019. Access was facilitated by Michelle Wain, the tenant. Present at the inspection were Lesley Williams and Chris Butcher representing the Respondent, Stafford Borough Council. As the Tribunal was concluding its inspection, Elizabeth Woodvine, a representative of the Applicant, John Betts, arrived at the Property. The Tribunal advised Ms Woodvine that the purpose of the inspection was for the Tribunal to familiarise itself with the condition of the Property and not to take submissions from the parties and accordingly her late arrival had not prejudiced the Applicant's case.
18. The Property comprises a ground floor flat situated in a development of approximately 60 similar properties in a former Ministry of Defence complex which the Tribunal understands were sold off to private investors some years ago.
19. The accommodation offered by the Property is as follows:

Hall; kitchen; lounge; separate room (designated a bedroom in the Improvement Notice) and shower room incorporating electric shower unit and WC.

There were fore and rear gardens.
20. The Property benefits from double glazed units and wall mounted electric heaters to the lounge, bedroom and shower room although it was unclear if these were functioning. The "separate room" is approached from the hallway by a reduced height internal lobby, which is under the stairway up to the first floor flat above. To increase the available floor to ceiling height in this lobby area the solid floor has been stepped down by approximately 200mm, which means there are two steps, low ceiling height and a turn to negotiate, when entering or leaving the "separate room".
21. The general condition of the property was extremely poor with numerous items of disrepair present along with evidence of dampness having affected internal surfaces, limited/poor quality amenities and bad internal arrangement. The premises would have failed the previous housing fitness standard (now repealed in favour of the Housing Health and Safety Rating System) set out in section 604 of the Housing Act 1985.

The Submissions of the Parties

22. Before consideration of the substantive issue of the Improvement Notices, the Tribunal initially concentrated on the two preliminary issues given above.

The Applicant's Submissions

23. The Applicant, who is a litigant in person, made submissions to the effect that the application should not be struck out as following receipt of the Improvement Notice on 24 October 2018, he made representations to the Respondent on 30 October 2018 requesting that the Notice be suspended and further that the Notice was in breach of section 13 (3) of the Housing Act 2004. The Respondent replied on 8 November 2018, refusing the suspension of the Notice but not addressing the point relating to section 13 (3) of the Act.
24. The Applicant states that the Notice required the works to be completed by 26 November 2018 which allowed just 33 days (from his receipt of the Notice) for quotes to be obtained and the works carried out which is in breach of section 13 (3) of the Act which states that "*The notice may not require any remedial action to be started earlier than the 28th day after that on which the notice is served*".
25. The Applicant further stated that his application to the Tribunal indicated that he was not only appealing the Notice but also the Respondent's refusal to revoke or vary the same by way of their letter of 8 November 2019.
26. The Applicant argued that it was reasonable to await the Respondent's comments in respect of his letter of 30 October 2019 before appealing the Notice but in any event his appeal in connection with the Respondent's refusal to vary or revoke the Notice by way of 8 November 2019 letter, was in time.

The Respondent's Submissions

27. The Respondent made the following submissions:
- a) Following service of the Improvement Notice, the Respondent tried to contact the Applicant by telephone without success.
 - b) The Respondent points out that whilst some of the works require completion by 26 November 2018, structural works should be completed by 21 January 2019. In addition, the Applicant was advised that he could contact the authorised officer (of the Respondent) if additional time was required and an extension would be considered.

- c) The Applicant in his letter of 30 October 2018 indicated awareness of the correct appeal procedure but did not follow it.
- d) The Respondent considers that the Notice complied with section 13 (3) as it gives two timescales for the work and furthermore the Respondent had attempted to engage with the Applicant for 10 months in order to remedy the Category 1 hazards identified.
- e) To suspend the Notice would effectively trap the tenant in poor housing conditions as the Respondent believes the Applicant will not carry out the works without compulsion.
- f) The Respondent considers that the demands of the Notice were proportional and not excessive.

THE LAW

28. The relevant sections of the Housing Act 2004 are as follows.

29. Section 13 of Part 1 Chapter 1 states:

13 Contents of improvement notices

(1) An improvement notice under section 11 or 12 must comply with the following provisions of this section.

(2) The notice must specify, in relation to the hazard (or each of the hazards) to which it relates—

(a) whether the notice is served under section 11 or 12,

(b) the nature of the hazard and the residential premises on which it exists,

(c) the deficiency giving rise to the hazard,

(d) the premises in relation to which remedial action is to be taken in respect of the hazard and the nature of that remedial action,

(e) the date when the remedial action is to be started (see subsection (3)), and

(f) the period within which the remedial action is to be completed or the periods within which each part of it is to be completed.

(3) The notice may not require any remedial action to be started earlier than the 28th day after that on which the notice is served.

(4) The notice must contain information about—

- (a) the right of appeal against the decision under Part 3 of Schedule 1, and*
- (b) the period within which an appeal may be made.*

(5) In this Part of this Act “specified premises”, in relation to an improvement notice, means premises specified in the notice, in accordance with subsection (2)(d), as premises in relation to which remedial action is to be taken in respect of the hazard.

30. Section 30 of Part 1 Chapter 2 states

30 (2) Offence of failing to comply with improvement notice

(2) For the purposes of this Chapter compliance with an improvement notice means, in relation to each hazard, beginning and completing any remedial action specified in the notice—

- (a) (if no appeal is brought against the notice) not later than the date specified under section 13(2)(e) and within the period specified under section 13(2)(f);*
- (b) (if an appeal is brought against the notice and is not withdrawn) not later than such date and within such period as may be fixed by the tribunal determining the appeal; and*
- (c) (if an appeal brought against the notice is withdrawn) not later than the 21st day after the date on which the notice becomes operative and within the period (beginning on that 21st day) specified in the notice under section 13(2)(f).*

31. Section 14 (1) of Part 3 Schedule 1 states:

(1) Any appeal under paragraph 10 must be made within the period of 21 days beginning with the date on which the improvement notice was served in accordance with Part 1 of this Schedule.

(2) (Any appeal under paragraph 13 must be made within the period of 28 days beginning with the date specified in the notice under paragraph 6 or 8 as the date on which the decision concerned was made.

(3) The appropriate tribunal may allow an appeal to be made to it after the end of the period mentioned in sub-paragraph (1) or (2) if it is satisfied that there is a good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal out of time).

32. Following an appeal under Schedule 1 against a decision by a Local Housing Authority to issue an Improvement Notice, the Tribunal may under section 15 (3) of that Schedule:

15 (3) The Tribunal may by order confirm, quash or vary the improvement notice.

DETERMINATION

33. Initially the Tribunal considered the two preliminary issues.
34. The Tribunal considers that these two issues are entwined particularly as the Applicant states that he did not wish to appeal until he had clarified the issue concerning compliance with section 13 (3) of the Act.
35. Section 13 (2) (e) and (f) of the Act require Improvement Notices to state the date by which works should be started and a date by which works should be completed. Section 30 of the Act indicates that the “operative date” for an Improvement Notices is used to determine whether the notice recipient commits an offence of non-compliance; with the start or completion dates. The Notice in this matter has an “operative” date of 26 November 2018 which could be construed as a start date but then for both the category 1 hazard of Excess cold and also the category 2 hazard of Electricals gives a date for completion of works as 26 November 2018, the same date.
36. Section 13 (3) of the Act given above, states that the Notice cannot require remedial action to be started earlier than the 28th day after that on which the notice is served which in this matter would be 20 November 2018. Even if the “operative” date is taken as the start date, the fact that the Notice requires completion of the works by the same date is clearly wrong. The Applicant’s concern over the period within which the works should be carried which resulted in his letter of 30 October 2018 is understandable and his desire to see this point clarifying before submitting his appeal is, in the Tribunal’s opinion, good reason for his appeal to be allowed outside of the 21 day period as per section 14 (3).
37. The Respondent in their submissions point out that whilst some of the works require completion by 26 November 2018, structural works should be completed by 21 January 2019, and also that the Applicant was advised that he could contact the authorised officer (of the Respondent) if additional time was required and an extension would be considered. The Respondent considers that the Notice complied with section 13 (3) as it gives two timescales for the work and furthermore the Respondent had attempted to engage with the Applicant for 10 months in order to remedy the Category 1 hazards identified. The Tribunal does not accept these arguments. It is not for the Applicant to clarify dates (which are

an integral part of a valid notice) and or seek to extend unworkable dates; the dates given are incorrect and unworkable.

38. A clear start and completion date must be specified in the Notice as endorsed by section 30 (2) which in terms of compliance considers dates by which works must be started and also when completed.
39. For reasons given above, the Tribunal utilising its powers under section 15 (3) of Schedule 1 to the Act quashes the Improvement Notice dated 22 October 2018.
40. For completeness, the Tribunal would also make the following comments.
41. The Applicant's further ground that his appeal was in time in respect of the Respondent's refusal to revoke or vary the same by way of their letter of 8 November 2019 does not succeed. A letter in response to an Applicant's enquiry about an Improvement Notice does not constitute a decision by an Authority to refuse to revoke or vary an improvement notice.
42. From its inspection, the Tribunal noted that the hazards identified by the Notice do exist and consider that the Property is, by any reasonable standard, not currently suitable for habitation. In dealing with the category 1 hazard of excess cold, it is for the Local Housing Authority to determine what works are required to reduce the hazard down to an acceptable level (below a category 1 hazard). Given the nature of this property it would not be unreasonable for a whole house (central) heating system, (with programmer and controls so the system can be used at a reasonable cost) to be demanded of the owner along with measures to reduce air leakage and the renewal of the sealed glazing units to the double glazed windows (where the seals to the sealed glazing units having broken down).

APPEAL

43. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

V Ward